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SUBJECT: NGO CONTACTS WARN ISRAELI GOVERNMENT CONSIDERING  
RETROACTIVE APPROVAL OF WEST BANK SETTLER OUTPOSTS

REF: JERUSALEM 60

Classified By: Consul General Daniel Rubinstein  
for reasons 1.4 (b) and (d).

**¶1.** (U) This is a joint Embassy Tel Aviv - Consulate General  
Jerusalem cable.

**¶2.** (SBU) Summary: According to NGO and GOI sources, the Israeli Ministry of Defense (MOD) intends to "reassess" the legal status of the land on which three West Bank outposts are built, despite previous GOI statements acknowledging their illegality under Israeli law and the existence of outstanding demolition orders at all three sites. Should these reassessments conclude that the land has no clear Palestinian ownership claim, NGO sources suggest, the GOI may seek to legalize these outposts retroactively. Israeli MOD sources told Embassy Tel Aviv that the process of investigating the legal status of the land at these outpost sites will take time. They added that no demolitions of illegal outposts are imminent, citing manpower constraints caused by enforcement of the moratorium on residential construction in West Bank settlements. NGO contacts speculate that retroactive legalization of outposts could supercede court-ordered demolitions, easing backlash from settler groups already frustrated by the moratorium. End Summary.

GOI MAY RETROACTIVELY LEGALIZE WEST BANK OUTPOSTS

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**¶3.** (C) On January 10, the GOI Civil Administration (CivAd) submitted a letter to the Israeli High Court of Justice (HCJ) stating that the GOI intends to re-examine the legal status of land on which the illegal outposts of Hayovel and Haresha are built. The letter was in response to a 2005 petition by the NGO Peace Now, calling for enforcement of demolition orders against illegally-constructed (under Israeli law) homes in these outposts. In an earlier (2005) letter provided to Post by Peace Now, the CivAd acknowledged that the houses in the Hayovel and Haresha outposts were constructed without GOI permits, and are therefore considered illegal (an issue separate from the legal status of the underlying land). In the same letter, the CivAd said it intended to enforce Israeli law regarding these outposts. According to Hagit Ofran, Peace Now settlements monitor, no subsequent GOI action was taken to enforce demolition orders against the homes in the two outposts, despite several Peace Now court appeals.

**¶4.** (SBU) Note: According to a database compiled by Israel Defense Forces (IDF) reserve Brigadier General Baruch Spiegel

in 2006, Haresha -- which has a current population of 35 families -- was established in 1995 as an outpost of the nearby Talmon settlement. It sits on land that remains under GOI survey due to a lack of clear ownership claims (and is therefore known as "survey land"). HaYovel -- with a current population of 25 families -- was established in 1995 as an outpost of the Eli settlement, on a mixture of state-owned land, survey land, and privately-owned Palestinian land. Haresha and HaYovel are located 1.5 kilometers from their parent settlements. End Note.

**¶15.** (U) Peace Now Secretary General Yariv Oppenheimer stated in a January 11 press release that the GOI's decision to reassess the lands indicates an interest in pursuing retroactive legalization of these outposts, including homes constructed without permits inside the outposts. Oppenheimer said, "if the (GOI) decides that the outposts are on state lands, then it is possible they will retroactively authorize the homes, as it did on numerous occasions across the West Bank. If the land is proven to be privately owned by Palestinians, the state will be forced to keep its promises to demolish the outposts -- or find some other creative solution to allow them to remain."

**¶16.** (SBU) The GOI's decision to reevaluate the legal status of the lands on which HaYovel and Haresha sit follows a similar GOI statement on December 1, 2009, that it intends to undertake a reassessment of the legal status of the land on which the 29-family outpost of Netiv HaAvot (also called Derekh HaAvot) was established. The December 2009 GOI statement came in response to another Peace Now petition for enforcement of outstanding demolition orders in the illegal outpost. Note: Netiv HaAvot was established without legal

permits in February 2001, near the settlement of Elazar in the Gush Etzion bloc. According to the Spiegel database, Netiv HaAvot sits on a mixture of "survey land" and private Palestinian land. As in the Haresha and HaYovel petition, the CivAd previously acknowledged that the houses within Netiv HaAvot were illegally constructed, according to Ofra. End note.

**¶17.** (C) Shlomy Zecharia, a lawyer representing Peace Now and the Israeli NGO Bimkom, pointed out that in each of these cases, the GOI has maintained that it does not have the resources to carry out evacuation and demolition orders in illegal outposts because its law enforcement agents are fully occupied with enforcing the GOI's ten-month moratorium on new residential construction in West Bank settlements. However, Zecharia claimed, the GOI has prioritized these same enforcement resources to conduct land surveys and planning activities, and to carry out demolitions of Palestinian villages, including the January 10 demolition of 33 buildings in the West Bank village of Khirbat Tana (Reftel).

#### PRECEDENT FOR RETROACTIVE LEGALIZATION

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**¶18.** (C) Lawyer Michael Sfard told PolOff that there is precedent for retroactive GOI legalization of outposts, citing the case of Givat HaBrekha, an outpost near the settlement of Talmon, which was established in 1996 without legal permits. A 2005 report commissioned by the GOI and authored by attorney Talia Sasson labeled Givat HaBrekha an illegal outpost. On October 20, 2009, the MOD authorized a plan that would retroactively legalize 60 existing houses at Givat HaBrekha and allow for the construction of 240 additional housing units. The plan resulted in the connection of Givat HaBrekha to Talmon, and its redesignation as a neighborhood of Talmon. The decision to authorize the plan was approved by the subcommittee for objections and the subcommittee for settlements on the same day, which, Bimkom's Alon Cohen-Lifshitz separately described as unprecedented in its speed. Zecharia concurred, noting that the planning approval process usually lasts several months, and can often take years.

¶19. (C) Zecharia said these recent cases demonstrate a continued effort on the part of the MOD to permit ongoing planning in existing neighborhoods, as well as in illegal outposts. Peace Now's Ofra said she plans to release to the media in a few weeks a list of plans for new West Bank settlement construction that she has collected from newspaper accounts (she noted that she had collected about ten plans to date, but only a few were significant). Cohen-Lifshitz said that when he traveled recently to the Mateh Binyamin Regional Council to look at the plan for Givat HaBrekha (now redesignated as a neighborhood of Talmon), he saw two new plans for two additional outposts in the Talmon vicinity. "The plans haven't been submitted yet," Cohen-Lifshitz said, "but they demonstrate the wish of the settlers to legalize and expand in the area."

LEGALIZING "ILLEGAL" OUTPOSTS UNPRECEDENTED

¶10. (C) On January 13, Oded Herman, senior advisor in the MOD's Political Military Bureau, told Embassy Tel Aviv Econoff that the MOD is conducting due diligence by investigating land issues regarding the three sites. According to Herman, HaYovel sits primarily on state lands, and Haresha and Netiv HaAvot primarily on disputed "survey land." Herman added that GOI lawyers face a long and difficult task in reassessing the lands' status, and will need decades of evidence, including aerial photography, to prove that Palestinians did not previously own or occupy the land in order to make a case against demolishing the sites. Herman explained that the IDF's chief attorney must first approve any findings resulting from the land reassessments, followed by the IDF's Chief of Staff, and finally the Minister of Defense. The bottom line, Herman asserted, is that the reassessment process will take some time. Asked about the possibility that an Israeli court would rule against the GOI and order demolitions, Herman reiterated that outpost demolitions were unlikely to occur soon, due to the manpower constraints created by enforcement of the moratorium.

¶11. (C) Embassy Comment. Embassy sees the MOD's attempts to retroactively legalize these three sites as an unprecedented divergence from its previous policy. Defense Minister Barak long asserted that the cost of addressing illegal construction in settlements was greater than the reward, but always held that outposts should be evacuated to maintain the rule of law. Therefore, the GOI only sought retroactive legalization for sites that they considered illegally built neighborhoods of legal settlements. Though labeled in the Sasson Report as an "illegal outpost," Givat HaBrekha is treated as an illegally built section of Talmon by the Spiegel Report. MOD contacts told the Embassy in June 2009 that the opinions expressed in the Spiegel Report represented their official position on the status of the site. These latest steps are likely an attempt to postpone court orders to demolish the sites, and prevent further backlash from settler groups already frustrated by the moratorium. However, the MOD may also see this as a trial balloon, and if approved by the court, would likely attempt this in similar cases involving pre-March 2001 outposts. As for post-March 2001 outposts -- those Israel has committed to evacuate under the Road Map -- the GOI will likely continue attempts to negotiate voluntary evacuations, as they did in Migron, in exchange for resettling residents in existing settlements. End Embassy Comment.

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